

Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing and Pioneer Development Corp., a Single Employer and Local 10 of the United Union of Roofers, Waterproofers, and Allied Workers of Passaic and Bergen Counties. Case 22-CA-17691

December 10, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on April 30, 1991, and an amended charge filed on July 9, 1991, the General Counsel of the National Labor Relations Board issued a complaint on August 7, 1991, against Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing and Pioneer Development Corp., a Single Employer, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent has failed to file an answer.

On September 17, 1991, the General Counsel filed a Motion for Summary Judgment. On September 20, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Director for Region 22, by letter dated August 22, 1991, notified the Respondent that unless an answer was received by close of business on August 29, 1991, a Motion for Summary Judgment would be filed. No answer was filed.

In the absence of good cause being shown for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing, a New Jersey corporation, with an office and place of business in Newark, New Jersey, is engaged in roofing and sheet metal work. The Respondent, Pioneer Development Corp., a New Jersey corporation, with an office and place of business in Newark, New Jersey, is engaged in general construction work.

At all times material, Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing and Pioneer Development Corp. have been affiliated business enterprises with common officers, ownership, supervision, and management; have formulated and administered a common labor relations policy affecting employees of these operations; have shared common premises, facilities, and equipment; have provided services for each other; and have existed with a common business purpose. By virtue of these facts, we find that Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing and Pioneer Development Corp. constitute a single employer within the meaning of the Act.

During the 12 months preceding issuance of the complaint, which period is representative of its operations during all times material, the Respondent, in the course and conduct of its business operations, purchased and received at its Newark, New Jersey location, products, goods, and materials valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time roofers employed by A.O.K. but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

Since about April 1989, and at all material times, the Union has been the designated collective-bargaining representative of the employees in the unit and has been recognized as the representative by

the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 1991, through May 31, 1992. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about October 30, 1990, and continuing to date, the Respondent has unilaterally ceased making health and pension payments on behalf of unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.

By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

By unilaterally ceasing to make health and pension payments on behalf of unit employees as required by the terms of the 1991-1992 collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to cease refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit. We also shall order the Respondent to make health and pension payments on behalf of its bargaining unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.¹ Further we shall order the Respondent to make whole unit employees for any expenses ensuing from its failure to make those payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd. mem.* 661 F.2d 940 (9th Cir. 1981), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

¹ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Andrew Ostergaard Kompany Inc. t/a A.O.K. Roofing and Pioneer Development Corp., A Single Employer, Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 10 of the United Union of Roofers, Waterproofers, and Allied Workers of Passaic and Bergen Counties as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time roofers employed by A.O.K. but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to make health and pension payments on behalf of bargaining unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the representative of the bargaining unit employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) Make health and pension payments on behalf of bargaining unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.

(c) Make whole and reimburse unit employees for any expenses ensuing from its failure to make the required payments as provided in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due under the terms of this Order.

(e) Post at its facility in Newark, New Jersey, copies of the attached notice marked "Appendix."²

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 10 of the United Union of Roofers, Waterproofers, and Allied Workers of Passaic and Bergen Counties as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time roofers employed by A.O.K. but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to make health and pension payments on behalf of bargaining unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the representative of the bargaining unit employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

WE WILL make health and pension payments on behalf of bargaining unit employees as required by the terms of the 1991-1992 collective-bargaining agreement.

WE WILL make whole unit employees for any expenses ensuing from our failure to make the required payments with interest.

ANDREW OSTERGAARD KOMPANY
INC. T/A A.O.K. ROOFING AND PIONEER DEVELOPMENT CORP.